

Remarks

Claims 1, 4-18 and 20-21 are in the case. Claims 5-18 and 20-21 have been allowed. The allowance of these claims is appreciated. Claims 2-3 have been cancelled by the present amendment. Claim 18 has been amended to correct a typographical error. Claims 1 and 4 stand rejected. Applicant has filed a Request for Continued Examination in order to point out further distinctions between the invention of Claim 1 and the cited reference.

Claim 1 has been amended to incorporate the subject matter of claims 2-4, which previously depended from claim 1, and to more precisely define the location of the superior incision. Support for the location of the superior incision is found, for example, in Figures 4A-4B and page 7, lines 8-21.

Claim 1 has been rejected under 35 USC § 102(b) as being anticipated by Grieg et al. Anticipation under 35 USC 102(b) requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Lindermann Maschinenfabrick GMBH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984); MPEP § 2131. The prior art reference must be such that a person of ordinary skill in the field of the invention would consider there to be no difference between the claimed invention and the reference disclosure. *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ.2d 1001, 1010 (Fed. Cir. 1991). The prior art reference must put the claimed invention in the hand of one skilled in the art. *In re Donohue*, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985).

It is respectfully suggested that the Grieg et al. reference does not disclose each and every element of the claimed invention, and does not put the claimed invention in the hand of one skilled in the art. Applicant notes that in its application, applicant included a discussion of the

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Grieg reference, and even included drawings of the Grieg technique. (see page 5, line 7-page 6, line 5; Figures 3A-3B). Therefore, it should be presumed that applicant's specification and claims distinguish over Grieg.

In its specification, applicant is using "superior" in the sense of "toward the head," which is a commonly accepted definition of superior. Applicant is not using "superior" in the sense of "anterior." This is made clear at page 7, lines 8-21, where applicant describes incisions shown in Figures 4A and 4B. For example, in describing the incision boundaries with reference to line projections 76, 77 of Figure 4A, applicant stated: "Lines 76, 77 give a general indication of how a projection of the incision 75 boundaries give almost a complete overhead access to the greater trochanteric fossa 70." (Applicant's specification, p. 7, lines 18-20).

Additionally, as applicant noted at page 5, lines 14-19 of its specification, Grieg described the location of Grieg's anterior incision as having an "inferior" location, as follows: "The approximate anterior incision starting point 71 is identified two fingerbreadths inferior and two fingerbreadths anterior to the tubercle of the greater trochanter 58. The approximate finish point for the anterior incision is identified three fingerbreadths inferior and two fingerbreadths lateral to the anterior superior iliac spine (ASIS) 59." (Grieg, ¶25, lines 37-43). Thus, Grieg specifically described Grieg's anterior incision as being "inferior," rather than superior. Additionally, like applicant, Grieg clearly used the directional terms superior/inferior to refer to a position distinct from "anterior."

As previously noted, the Grieg reference does not describe the anterior incision as being superior, but instead describes the anterior incision as being "made *along* the axis of the femoral neck." (¶0024, lines 19-20). Further, the drawings in the cited reference do not show the first incision as being superior, but rather as being anterior and along the axis of the femoral neck.

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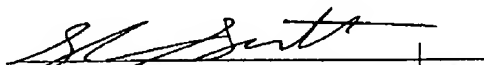
Compare, for example, the anterior incision of Figures 4A-12 of applicant's specification with the location of the anterior incision in Figures 2 and 2A of the cited reference.

Applicant does not agree that Grieg teaches the step of preserving most or all of the short rotators and posterior capsule. Applicant is unable to locate any discussion in Grieg concerning preserving the short rotators or the posterior capsule. In contrast, Grieg specifically describes a complete capsular incision as follows: "The capsular incision takes the form of an "H-shaped" window formed by incisions 72. The H-shaped window is formed by adding supplementary perpendicular limbs around the equator of the femoral head 56 and the base of the femoral neck 60 to the initial incision along the axis 70 of femoral neck 60." (Grieg, ¶27, lines 10-15).

Accordingly, it is respectfully suggested that a prima facie case of anticipation has not been established as to claim 1.

It is believed that this response has been filed within the applicable time period for responding and that no extension of time is therefore required, but if an extension is required, applicant hereby requests an appropriate extension of time. It is further believed that no fees are due, but if any fees or credits are due, the Commissioner is authorized to charge or deposit them to Deposit Account No. 502795.

Respectfully submitted,



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